

MORGAN COUNTY PLANNING COMMISSION
April 12th, 2021 MINUTES

The Morgan County Planning Commission met on Monday, April 12th, 2021, at 7:00 p.m. in the Assembly Room of the Morgan County Administration Building. The meeting was called to order by Chairman Nathan Troudt.

Allyn Wind, Mike Erker and Mike Bailey were present. Nathan Troudt, Terry Rutenbeck, and Robert Pennington attended remotely via the Zoom platform. Also present were Pam Cherry, Planning Administrator, Ashia Boteler, Planning Clerk, and Charlotte Bolduc, Planning Technician. Morgan County Attorney Kathryn Sellars attended via Zoom. Also present via Zoom was Karol Kopetsky, Morgan County IT Administrator.

It is noted that this Planning Commission meeting for April 12th, 2021 was held in person with an option to attend remotely through the Zoom platform.

APPROVAL OF MINUTES: March 8th, 2021

It was moved by Allyn Wind and seconded by Terry Rutenbeck to approve the March 8th, 2021 minutes as presented. Motion carried 5-0 with Mike Erker recusing himself as he was not in attendance on March 8th, 2021.

APPROVAL OF AGENDA:

It was moved by Terry Rutenbeck and seconded by Allyn Wind to approve the Agenda as presented. Motion carried 6-0.

Chairman Nathan Troudt read the review process for tonight's meeting.

OLD BUSINESS:

No old business.

NEW BUSINESS:

APPLICATION:

- 1. Applicant:** Pivot Energy
Landowners: Terry L. Larsen Trust and Anna M. Larsen Trust
Legal Description: A parcel of land in the N ½ of SW ¼ , Section 33, Township 4 N, Range 56 W of the 6th P.M., Morgan County, Colorado and addressed as 18712 County Road 26, Brush, Colorado 80723
Request: The landowners and applicant are requesting approval of a Special Use Permit for a Solar Energy System. The energy generated from this project will be injected into Xcel Energy's existing electrical infrastructure along MCR 26 and will provide cost savings to participating electrical rate payers as part of Xcel Energy's Solar *Rewards Community Program

Eli Oppenheimer was present on behalf of Pivot Energy and the landowners.

APPLICATION OVERVIEW:

Pam Cherry, Planning Administrator, read her file summary as follows:

This application is for a Special Use Permit to construct a solar energy system just south of I-76 and east of County Road 26. The property is located in the N½ of the SW¼ of Section 33, Township 4 North, Range 56 West of the 6th P.M. The property is directly south of I-76 and east of County Road 26, Brush, Colorado 80723.

The property is zoned Rural Residential, 30 acres of a 65 acre parcel will be used for solar panels and other equipment for the facility. This is a 5mw facility and is not a major facility of a public utility and will be privately owned.

- a. Pursuant to Section 2-325 of the Morgan County zoning regulations, any use, not designated as a Use by Right, Accessory Use, Conditional Use and Use by Special Review or not otherwise prohibited in a particular zone, may be approved as a Use by Special Review pursuant to the criteria and procedures as established by the zoning regulations.
- b. Pursuant to Section 3-175 of the Morgan County zoning regulations, parcels larger than 20 acres, solar energy systems are not listed as a Use by Right, Conditional Use or Use by Special Review.

The electricity generated from this project will be injected into Xcel Energy's existing electrical infrastructure along County Road 26. Twenty-five acres of the 65 acre parcel will be used for the solar system for an initial term of 20 years with the possibility of an extended operational time period of up to 20 more years. Any increase to the 30 acres for the solar use will require an amendment to this permit.

During construction, onsite activity is expected to take place between the hours of 7am and 5pm, Monday through Saturday. Construction will take 3-4 months. During operation the facility will not be staffed so will have minimal traffic impacts once constructed.

The perimeter of the project will be fenced, enclosing the solar panels, other equipment and equipment pads. The equipment moves to track the sun during the day at a very slow speed, no noise results. The project will not use security lighting so adjacent properties will not be exposed to objectionable night lighting.

Criteria – Special Use Permits

The following criteria are to be used by the Planning Commission and the Board of County Commissioners when reviewing an application for a Special Use Permit.

- (A) The use and its location as proposed are in conformance with the Morgan County Comprehensive Plan. The property is located in the northeast planning area.

Chapter 2 – Plan Summary

2.II.A - Economic Development

Goal – Diversify the economy in Morgan County to broaden business employment opportunities for residents and to further economic growth.

This project will generate additional property taxes without strain on public resources provided by the county. To the extent possible the operator will seek to hire local contractors throughout construction and the life of the project.

2.C.1 – County Wide Goal

Goal - To encourage development where: 1) it is in proximity to the activity centers; 2) the proposed development is compatible with existing land uses; 3) there is access to established public infrastructure; and 4) where in outlying areas of the county there is access to utilities and there is little additional burden on rural services.

Uses adjacent to this property include agriculture, I-76, residential and a golf course. The property is unable to be irrigated so it is not feasible to be used for agriculture production.

2.E.1 Utilities

Goal: To ensure that adequate and financially secure public utilities are provided to all developments in Morgan County.

This project will not require the use of water, sewage or telecommunications onsite and will connect directly into Xcel Energy's existing electrical infrastructure on the west side of the parcel.

Chapter 5 - Environment

5.IX

Goal - To preserve the manmade and natural environment in order to enhance the quality of life in Morgan County.

This project will not impact wetlands, floodplain or drainage patterns. A Constraints Analysis has been completed for the site as well as a Phase I Environmental Site Assessment to avoid adverse impacts on plant and wildlife species.

(B) All the application documents are complete and present a clear picture of how uses are to be arranged on the site or within Morgan County.

(C) The Site Plan conforms to the district design standards of these Regulations.

(D) All on and off-site impacts have been satisfactorily mitigated either through agreement, public improvements, site plan requirements or other mitigation measures.

During construction and when necessary water trucks will be used for dust mitigation. Upon completion of the project the site will be reseeded with a native low-growth prairie grass mix. Landscaping maintenance will occur on a regular basis during the growing season.

(E) The special use proposed has been made compatible with the surrounding uses and adequately buffered as determined by the County.

The closest residences to the facility are more than 500' to the south and already have trees along their northern boundary, which act as a visual buffer from the project area and Interstate.

(F) The special use poses only the minimum amount of risk to the public health, safety and welfare as set by federal, state or county regulation, whichever is the strictest.

A solar glare Analysis was completed using the industry standard tool for studying glare impacts. East and westbound traffic on I-76 from County Road 25, north and southbound traffic on Co Rd 26, two-way traffic along residential roads as well as glare from 33 observation points at nearby residences were evaluated in the analysis. No instances of glare caused by the project. The project will have minimal impacts on surrounding adjacent uses as the facility is unstaffed, generates no emissions, emits no light or discernible noise.

(G) The special use proposed is not planned to be developed on a non-conforming parcel.

The parcel is conforming.

(H) The applicant has adequately documented a public need for the project, all pertinent technical information, and adequate financial resources to implement it, and has paid all fees and review costs levied by the County for application processing and review.

*The energy generated from this project will be injected into Xcel Energy's existing electrical infrastructure along MCR 26 and will provide cost savings to participating electrical ratepayers as part of Xcel Energy's Solar*Rewards Community program.*

(I) For any special use requiring a supply of water that the applicant has demonstrated a source of water which is adequate for the proposed use in terms of quantity and reliability and in the case of human consumption, quantity, quality, and reliability.

This project does not require a water supply.

All referrals and notifications were distributed and there have been no comments received as of 3-5-21.

Eli Oppenheimer presented the PowerPoint presentation..

DISCUSSION:

There was discussion on the file summary, 25 acres amended to 30 acres, Allyn Wind asks if this needs another hearing.. Pam Cherry explains that if it is considered a minor amendment, then it can be done administratively, but because the increase was requested at time of hearing, it will be granted as part of this permit. Expansion on the 30 acres would be an amendment at a later time.

PUBLIC COMMENT OPEN:

Those speaking in favor: None present or on Zoom platform

Those speaking in opposition: None present or on Zoom platform

PUBLIC COMMENT CLOSED:

MOTION:

It was moved by Mike Bailey and seconded by Mike Erker to approve this special use application as presented.

Motion carried 6-0

Next business:

Proposed amendments to the Morgan County Zoning Regulations regarding:

- a. A resolution amending the Morgan County Zoning Regulations concerning floodplain maps and floodplain regulations.

Chairman Nathan Troutt introduces next item of business.

Pam Cherry, Planning Administrator, read her amended summary as follows:

The Federal Emergency Management Agency (FEMA) provided Morgan County preliminary floodplain maps and a Flood Insurance Study (FIS) for the South Platte River on May 29, 2019. You may recall in April of 2018 the county adopted FEMA maps and the FIS for Beaver Creek that included base flood information in the Brush area. Those maps will remain in effect; these maps add the South Platte River as an area that has been studied extensively.

Upon receipt of the preliminary maps and FIS there is a FEMA process in place for the adoption of the preliminary study and maps that includes public meetings and publication. The process has been followed. Included in your packets is a FACT Sheet prepared by the Colorado Water Conservation Board which is an overview of that process. Adoption of the maps has been delayed due to the Corona Virus and staff changes at the Colorado Water Conservation Board.

The changes to the Morgan County regulations have been specifically identified by FEMA:

1. Addition of No-Rise Certification definition;
2. Reference to Designated Flood District and Flood Prone District replace with Special Flood Hazard Area in compliance with state and federal law;
3. Addition of the basis for establishing the SFHA from the South Platte Flood Insurance Rate Maps (FIRM) and the Flood Insurance Study (FIS);
4. 3-780 H requires the use of federal, state or other source, for administration of regulations;
5. 3-780 I requires that any new construction, substantial improvement or other development within waterways with base flood elevations and without a floodway will be permitted until demonstrated that the effect of development will not cause a rise in the base flood more than six inches at any point in the county;
6. Section 3-822 was added to comply with state and federal law to address floodway development.

There was a public meeting held on October 8, 2019 at Morgan County Community College that met FEMA requirements. All maps were displayed at the meeting as well and the FIS was available. Approximately ten Morgan County citizens of attended that meeting to discuss their particular properties and floodplain impact upon it. There were no objections received to the preliminary documents. The maps and the FIS are as they were provided to the county in 2019 and presented at the community meeting.

Morgan County is required to adopt the maps by May 18, 2021. Planning Commission reviews all proposed changes to the floodplain regulations and makes a recommendation to the Board of County Commissioners where it will be considered and formal action taken.

There was discussion that neither the railroad tracks nor would the interstate act as a dike nowadays. Pam Cherry explains these are related to the Beaver Creek floodplain that was adopted a couple years ago. This is only along South Platte, & does not affect the Brush area at all.

There was discussion that it is costing the people of Beaver Creek a lot of money for flood insurance, Pam Cherry states that because of the floodway and floodplain was primarily the concentrate that study was on the City of Brush, so Brush would have to address that. That is completely different from this.

There was discussion as to why we joined the FEMA floodplain. Pam Cherry explained it is a requirement to participate in the NFIP, which provides the county floodplain insurance at federal rates.

There was discussion on the cost of flood insurance for the City of Brush that is in the floodway.

There was discussion on addition of the No Rise Certification. Pam Cherry explains that if you are located within the floodway, if you can show that any new structure or development is not going to cause a rise in the base flood elevation, and then you can get a floodplain permit to build a structure. This only affects new structures.

There was discussion on how this will financially affect people along the South Platte, Pam Cherry explains South Platte goes through the county, but does not go through any existing developments. There are a few houses, but not developed the way Brush is.

There was discussion on maps displayed in 2019 showed variation of 2013 flood and 2015 flood, Pam Cherry explains the county asked FEMA to do this study back in about 2011 county wide, they studied Beaver Creek and South Platte River. The first study was Beaver Creek because of the impact in the City of Brush.

There was discussion on the controversy on the lack of impact peoples input had, Pam Chery explains whenever these maps are distributed, those who are impacted can file an appeal on the determination by FEMA to have their property removed.

There was discussion on the financial impact on people in 10 years.

There was discussion on notifications sent, and any appeals to be exempted submitted would be handled through FEMA, not through the county.

There was discussion on regulations not allowing development in this area without the inability to show a rise, as well as protecting the waterway and the people who want to purchase along the Platte, showing them where they need to be to avoid damage.

There was discussion on the requirement for flood insurance, and the cost of this.

There was discussion on the difference between FEMA coming in after the fact in the City of Brush, and how this will save people money because it is coming in before the fact to show the floodway.

There was discussion on what would happen if this is not passed, Pam Cherry explains the county would not be eligible for NFIP until the maps and new studies are adopted. NFIP allows the county to purchase insurance at government rates.

There was discussion on funding from FEMA, and the fact that it would go away if the regulation is not passed, and the county becomes ineligible for the NFIP.

There was discussion on mortgage lenders requiring floodplain insurance.

There was discussion on purchasing insurance from the open market, and meeting FEMA standards.

There was discussion on how this informs buyers before they purchase, and how the state provides this information as well.

There was discussion that without these regulations, the cost of flood repairs go back to the tax payers, with this regulation, FEMA provides some funding for repairs.

PUBLIC COMMENT OPEN:

Those speaking in favor: None present or on Zoom platform

Those speaking in opposition: None present or on Zoom platform

PUBLIC COMMENT CLOSED:

Additional discussion:

There was discussion on maps adopted in May of 2018 and this study to be adopted May of 2021.

There was discussion on the size of properties along South Platte in comparison to City of Brush.

There was discussion on flood insurance study that came out with new maps.

MOTION:

It was moved by Mike Erker and seconded by Allyn Wind to accept the amendments as presented.

Motion carried 5-1.

ADJOURN:

It was moved by Mike Erker and seconded by Allyn Wind to adjourn the meeting.

Motion carried 6-0

Respectfully Submitted,
Ashia Boteler, Planning Assistant